



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-131
Regulation title	Standards for Licensed Private Child-Placing Agencies
Action title	Adopt New Standards for Licensed Private Child-Placing Agencies
Date this document prepared	December 14, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action is a joint action to repeal the existing regulation, 22VAC40-130, and establish a new regulation, 22VAC40-131, for licensed private child-placing agencies. The purpose of the regulatory action is to protect children under the age of 18, for whom home-placements are pending or home-placements have been made in approved foster care homes, treatment foster care homes, short-term foster care homes and adoptive-homes up until the time the adoption is finalized by the court.

This new regulation is intended to: improve clarity within the language of the regulation; incorporate improvements in the language and reflect current federal and state law; align home approvals, supervision, and monitoring practices and responsibilities of private child-placing agencies with public child-placing agencies; relieve intrusive and burdensome language; and provide greater protection for children in care. This regulation will create consistency between providers approved by licensed child-placing agencies and local departments: an action step required by federal regulations, identified in the federal Child and Family Services Review and included in the department's Performance Improvement Plan.

Major components of the regulation include consistency with 22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards for public child-placing agencies including: definitions; home

provider training mandates; home study requirements, streamlining the provider approval process, and documentation protocols; safety of the provider’s home environment; and background check requirements. The regulation was reorganized and categorized based on provider recommendations and, for the purpose of increasing provider compliance.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

The final regulation Standards for Licensed Private Child-Placing Agencies (22 VAC 40-131) was approved by the State Board of Social Services on April 20, 2011. On August 17, 2011, the Board suspended the final action in order to solicit public comment. The public comment period began September 12, 2011 and ended October 11, 2011. On December 14, 2011, the Board set a new effective date of May 1, 2012.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 63.2-217 and 63.2-1734 of the Code of Virginia (Code) requires the State Board of Social Services (Board) to adopt regulations necessary or desirable to carry out the provisions of Title 63.2 of the Code and to include in the regulation provisions to ensure that activities, services and facilities provided by licensees are conducive to the welfare of the children under custody or control of the licensee. Section 63.2-1701 of the Code provides legal authority to the Board for licensure of child-placing agencies.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed regulation provides criteria and requirements for the Department of Social Services (department) to evaluate the licensees to ensure that activities, services and facilities provided by licensees are conducive to the welfare of the children under custody or control of the licensee and criteria for the licensees to approve, evaluate, and re-approve family home providers.

There have been three separate failed attempts to adopt a new replacement regulation for the licensure of private child-placing agencies since 1989. The existing regulation, 22VAC 40-130 was effective August 1989 and since that time there have been many changes in federal and state law and practice, including the Virginia’s Children’s Services System Transformation, that are not included in the current regulation. Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language. This flexibility will allow for clarified language to improve

understanding and interpretation leading to enhanced compliance and enforcement and to the creation of requirements conducive to greater protection of the health, safety and welfare of children in care.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Substantive revisions include: aligning requirements for licensee approval of, provision of services to, and monitoring of foster care homes, adoptive homes, and independent living arrangements with the Code of Virginia; adding definitions consistent with the Code of Virginia and other social services regulations; updating sponsor-types with legal entities recognized by the State Corporation Commission and including information required as part of the application for approval process; requiring the licensee to develop and implement written operational policies and procedures to include prohibition of corporal punishment and measures to ensure protections for children in placements; adding a requirement for developing and implementing a program evaluation and improvement plan; making home-study components, provider approval and home monitoring requirements consistent for provider home-types and consistent with other social services regulations; making home environment assessment components consistent with other social services regulations; adding requirements for provider training and development consistent with other social services regulations; requiring custodial agencies to enroll children in school; requiring the licensee to report serious incidents, injuries, or accidents that happen to the child; requiring visitation and continuing contact with the child consistent with other social services regulations; incorporating requirements of Department of Medical Assistance Services for treatment foster care; adding requirements for developing and implementing record-keeping practices and record storage for all types of files; adding a requirement for encouraging and training providers in positive behavior support techniques to protect and keep the child safe while helping the child learn positive behaviors; adding requirements for independent living arrangements consistent with Code of Virginia and other social services regulations and policy; and adding applicable requirements of the Code of Virginia and Hague Adoption Convention for adoption and inter-country adoption.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

This regulation will create consistency between providers approved by licensed child-placing agencies and local departments: an action step required by federal regulations, identified in the federal Child and Family Services Review and included in the department's Performance Improvement Plan. The regulation addresses provisions of applicable child-placing federal and state law and practice since 1989, including the Virginia's Children's Services System Transformation.

The intent of enhanced regulation is to protect the health, safety and welfare of the children by: strengthening and clarifying requirements for private licensed child-placing agencies and the providers who are approved by them. It includes an organization recommended by the members of the regulation revision committee, a committee which was formed and utilized per public participation guidelines and

whose membership included private and public child-placing stakeholders and stakeholders from several public agencies. It is anticipated that the regulation organization will assist licensees in efforts of regulation compliance by making the standards more user-friendly.

This proposed regulatory action poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
22VAC40-131-10. Definitions.	The following new terms and their meanings are added in order to clarify their use in the body of the regulation: adoptive parent, adoptive placement, adult, annual, applicant, background checks, behavior support, birth parent, caretaker, career and technical education, case management, casework staff, child’s family, dual approval process, emergency placement, employee, foster care placement, foster care services, foster parent, independent living services, in-service training, intercountry placement, local board, local department, mental abuse, mutual selection, parent, parental placement, permanent entrustment agreement, physical abuse, physical neglect, physical restraint, placing agency, pre-service training, provider, records, resource parent, seclusion, serious incident reports, services plan, sexual abuse, short-term foster care, special needs, treatment, treatment foster care,	<p>The definition of applicant, mutual selection, serious incident reports, and treatment team have been changed.</p> <p>In the definitions of applicant and mutual selection, the words ‘independent living arrangement’ were removed.</p> <p>The definition of serious incident reports has been expanded to include incidents involving criminal activity and incidents requiring police intervention.</p> <p>In the treatment team definition, ‘the licensee’ has been removed.</p>	<p>Changes made for clarity.</p> <p>Independent living arrangement is not a person, so it should not be included as a type of applicant or in the definition of mutual selection.</p> <p>It is important to know about serious incidents involving criminal activity and requiring police intervention.</p> <p>This language is redundant and not necessary.</p>

	<p>treatment foster parent, treatment team, and youth.</p> <p>The definition for foster care was replaced with foster care placement and foster care services.</p>		
22VAC40-131-30. Sponsorship.	This section requires that each child-placing agency has a sponsor.	Strike the paragraph under 22 VAC40-131-30 3 b; 4 c; and 5 c. This requirement refers to an executive director. Requirements for an executive director are found elsewhere in the regulation.	Paragraph is redundant to 22 VAC40-131-140 C in this regulation.
22VAC40-131-40 G. Licensee.	This section requires the licensee to develop an operating budget.	Language changed to ensure the licensee develops a budget for a period of twelve months of operation.	Change made to return to the content of the current regulation, with language revised for clarity.
22VAC40-131-70 A. Conflict of Interest.	This section specifies who can serve on the placing agency's board of directors and prohibits the licensee allowing board members who are applicants for adoption or recipients for adoption services.	Change was made in 22 VAC40-131-70 A 2 adding 'until the final order of adoption is entered.'	This allows for parents with experience in adoption to participate in board activities. Change reflects the language in the current regulation, 22 VAC40-130-140 A.
22VAC40-131-170 B. Program Statement and Description	This section prohibits certain acts of discrimination to deny or delay a child's placement or deny an opportunity to apply to be a foster or adoptive parent.	Change was made to 22 VAC40-131-170 B. Language referencing gender, age, religion, political beliefs, sexual orientation, disability and family status was removed. The words 'to apply' in 22 VAC40-131-170 B 2 were removed.	Change made to be consistent with federal law- 42 USC 671.
22VAC40-131-180 J. Home Study Requirements	This section describes the home study narrative requirements.	In referring to medical examinations, the language 'as described in 22 VAC40-131-290 L-M.' was added to 22 VAC40-131-180 J 2 e 2.	Change made for clarity to remind licensees of requirements for medical examinations in 22 VAC40-131-290 L-M to improve regulation compliance.
22VAC40-131-200 A, B, G Initial Approval or Disapproval of Home	These sections discuss requirements prior to placement of a child in a home or living arrangement.	'Or living arrangement' language was struck from 22 VAC40-131-200 A and 'or independent living arrangement' was struck from 22 VAC40-131-200 B and G 1.	Change made for clarity; The requirements in this section do not apply to independent living arrangements.
22VAC40-131-200 A 2 and H 1 Initial Approval or	This section requires orientation and on-going training for providers following approval.	Language requiring 'orientation' was removed from 22 VAC40-131-200 H 1 and placed in 22 VAC40-131-200 A 2.	Change was made for clarity and to allow the orientation training to occur prior to the

Disapproval of Home			approval of the provider.
22VAC40-131-210 A Provider training and development	This section describes requirements of pre-service training for each newly approved provider.	Short-term foster families are no longer required to complete this training. Language was made to require the training to be consistent with the licensee's program statement and description required by 22VAC40-131-170.A and to include, as applicable, the listed core competencies.	This change was made for clarity and to allow agencies to develop pre-service training based on their program statement and description.
22VAC40-131-210 A Provider training and development	This section describes the agency's plan of pre-service training for each newly approved provider.	22VAC40-131-170 A 22 was added to require pre-service training on methods of less intrusive behavior support, crisis management techniques and physical restraint methods approved by the licensee.	This language is required in 22VAC40-131-90 G 3 and should be covered in provider pre-service training.
22VAC40-131-230 E Monitoring and re-evaluation of provider homes.	This section discusses the re-evaluation process for approving a home.	In reference to tuberculosis screenings, language was added to 22VAC40-131-230 E 4 to reference 22VAC40-131-290 K.	Reference added for clarity about required tuberculosis screenings to increase regulation compliance.
22VAC40-131-250 A Intake, Acceptance and placement	This section discusses requirements prior to placing a child.	The language 'in foster care, short-term foster care, or treatment foster care' was removed from the first sentence.	Correction was made for clarity, these words are not necessary.
22VAC40-131-250 E Intake, Acceptance and placement	This section discusses written requirements prior to placing a child.	Language requiring only one parent to sign the entrustment was added to 22VAC40-131-250 E 2. Due to lettering error, E is changed to D.	Change made to be consistent with § 63.2-1817 of the Code of Virginia (Code).
22VAC40-131-250 S Intake, Acceptance and placement	This section defines requirements when a licensee accepts a child for placement from a parent or other individual having custody.	The word 'assessment' is struck from 22VAC40-131-250 S 3. S is changed to R due to lettering error.	Correction was made for clarity.
22VAC40-131-270 B, C Interstate placement	These sections require approval of the Interstate Compact on the Placement of Children before an out of state child is placed in a Virginia home.	Written approval from the Interstate Compact on the Placement of Children is not required prior to placement, but it must be maintained in the child's file.	The child can be placed with verbal approval from the Interstate Compact on the Placement of Children, but written approval must be obtained and maintained in the child's file.
22VAC40-	This section describes	The term 'handicapping	Change made to use

131-290 C Medical, dental and psychiatric examinations and care	requirements of the child's medical report	conditions' was removed.	currently accepted terms.
22VAC40-131-300 School enrollment	This section describes school enrollment requirements for children in care.	22VAC40-131-300 C was added: "For school-aged children in foster care, the licensee shall collaborate and work cooperatively with the local department and the local education authority to maintain educational stability for each child. Cooperative efforts shall be documented in the child's record."	This language was added to comply with federal law, Public Law 110-351.
22VAC40-131-330 F Visitation and continuing contact with children	This section requires that more than half of the contacts made with the child shall be conducted in the placement setting.	The proposed language was removed. This language was added: "The licensee shall have at least one face-to-face contact with the child in the placement setting every 60 days."	The original requirement only applied to local agency social workers, not the licensed child placing agency. The language in the proposed regulation is now the same as the language in the current regulation.
22VAC40-131-330 K Visitation and continuing contact with children	This section requires the licensee to make certain notifications if a permanent move is made from one foster home to another.	The word 'permanent' is struck.	Local departments of social services must be made aware of any move of a child. Local departments of social services must know where the child is placed at all times.
22VAC40-131-370 H Case Record requirements	This section describes requirements for active and closed case files.	The 'or' in 22VAC40-131-370 H 3 is removed and replaced with 'and'.	All of these elements are requirements.
22VAC40-131-370 M Case Record requirements	This section describes documentation requirements for home provider's files.	In 22VAC40-131-370 M 1, the language 'in a format required by the department' is removed.	The department does not have an application format.
22VAC40-131-460 B Children placed in treatment foster care	This section adds requirements that must be met when providing treatment foster care.	In 22VAC40-131-460 B 4 c, the first 'and' is removed and 'or' is added.	Language changed for clarity, as having both full time staff and part time staff is not required.
22VAC40-131-490 E Adoption counseling and services for birth parents	This section describes the process for securing termination of parental rights.	The requirement in 22VAC40-131-490 E is removed.	This requirement is covered 22VAC 40-131-250 E and does not belong in the 'adoption counseling and services for birth parents' section.

<p>22VAC40-131-500 Involuntary termination of parental rights.</p>	<p>This section requires the licensee to follow Code of Virginia and policy approved by the state board when involuntary termination of parental rights is necessary.</p>	<p>The following language is removed: “and policy approved by the state board”. The following language is added: “any other necessary legal requirements to achieve the involuntary termination of parental rights”</p>	<p>Phrase removed for clarity, there is no policy approved by the state board that is relevant to this section. The added language was suggested by the Office of the Attorney General.</p>
<p>22VAC40-131-510 A, B Provisions for adopting children with special needs</p>	<p>This section requires that children with special needs are placed on the Adoption Resource Exchange of Virginia promptly after parental rights have been terminated.</p>	<p>The licensee shall collaborate and work cooperatively with the local departments to ensure that children with special needs are placed on the Adoption Resource Exchange of Virginia unless an adoptive placement agreement has been signed. The licensee holding custody shall ensure the child is registered.</p>	<p>Change was made to clarify requirements on who needs to register a child with special needs on the Adoption Resource Exchange of Virginia.</p>
<p>22VAC40-131-510 C Provisions for adopting children with special needs</p>	<p>This section discusses requirements for the licensee to work with the local departments to secure adoption payments for the child.</p>	<p>“Subsidy” is removed and ‘assistance’ is added.</p>	<p>Due to changes to § 63.2-1300 of the Code, “Subsidy” is now referred to as ‘assistance’.</p>
<p>22VAC40-131-510 D Provisions for adopting children with special needs</p>	<p>This section requires that necessary and appropriate services and treatment are provided to children with special needs.</p>	<p>Language ‘including arranging for necessary services after the final order’ is removed. Language ‘pursuant to Title 63.2 Chapter 13 of the Code of Virginia’ is added.</p>	<p>Language is added pursuant to § 63.2, Chapter 13 of the Code-Adoption Assistance for Children with Special Needs.</p>
<p>22VAC40-131-520 F Selecting an adoptive home</p>	<p>This section describes what the licensee shall provide to adoptive parents about the child.</p>	<p>‘Educational’ was added to 22VAC40-131-520 F 1.</p>	<p>“Educational” is added because this information should be provided to the adoptive parents.</p>

Minor grammatical, typographical, and numbering/lettering errors were also corrected.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

On August 17, 2011, the Board suspended the final adoption process for 30 days to solicit additional public comment. Notice of the suspension and public comment period was published in the *Virginia Register* on September 12, 2011, with comment ending October 11, 2011. During the additional public comment period on the final regulation, 2,843 comments were received. A summary of the comments is below.

Commenter	Comment	Agency response
One person	<p>22 VAC 40-131-10 Definitions</p> <p>Add definitions. If a term such as professional staff is used, please define it.</p>	<p>Agency will clarify term “professional staff” in training and technical assistance.</p>
One thousand six hundred and eleven (1611) public comments	<p>22 VAC 40-131-170 – Program statement and description</p> <p>170 B (Non-discrimination) – Support <u>proposed</u> language adopted by Board in December 2009, which included the expanded antidiscrimination provision.</p>	<p>The final regulation is consistent with federal law 42 USC 671.</p>
One thousand one hundred and fifty-four (1154)	<p>170 B (Non-discrimination) – Support <u>final</u> language adopted by Board in April 2011, which included the shortened antidiscrimination provision.</p>	<p>The final regulation is consistent with federal law 42 USC 671.</p>
One provider	<p>22 VAC 40-131-190 – Home environment</p> <p>190.R- Meeting this standard is overly burdensome, as it mandates that agency staff be knowledgeable about weapons complying with state and federal laws and local ordinances.</p>	<p>Issues regarding weapons will be clarified in training and technical assistance.</p>
One provider	<p>S. Licensing laws vary by locality; this puts an unrealistic demand on child-placing agencies to verify that pets have been licensed.</p>	<p>Issues regarding veterinary records will be clarified in training and technical assistance.</p>

<p>One provider</p>	<p>22 VAC 40-131-210 – Provider training and development</p> <p>A. Requiring the training areas outlined in this standard for newborn and international adoptions will be overly burdensome in terms of time and expense to families and agencies. In addition, the child-placing agency may require additional training as appropriate once the child is identified.</p>	<p>Agency took previous action on this in response to earlier. A change was made to allow pre-service training to be consistent with the licensee’s program statement and description.</p>
<p>One provider</p>	<p>22 VAC 40-131-230 – Monitoring and re-evaluation of provider homes</p> <p>230 B 1-2: While frequent home visits and contact with provider homes may be beneficial for families fostering older children, it would be overly burdensome and unnecessary for agencies working in infant adoption and intercountry adoption. There is already a standard that agencies need to be informed of significant changes to the home prior to placement which would require a home study addendum, and this standard is sufficient.</p>	<p>This language is consistent with 22VAC 40-211- Resource, Foster and Adoptive Family Home Approval Standards. This is in line with our goal of consistent regulations between public and private agencies.</p>
<p>One provider</p>	<p>22 VAC 40-131-250 – Intake, assessment, and placement</p> <p>E. We suggest adding another acceptable condition. 4. <u>A notarized entrustment agreement signed by one parent and no other parent or individual has the legal right to consent to the adoption;</u> REASON: Need to add, otherwise agencies forced to pursue court action for termination of parental rights when an individual’s consent is not required by law.</p>	<p>Regulation language for entrustment agreements is consistent with § 63.2-1221 of the Code.</p>
<p>One provider</p>	<p>S.1- Add an additional code: 63.2-1233 of the Code of Virginia, as this</p>	<p>The suggested Code section does not apply to 22VAC40-131-250 S 1, as it discusses parental</p>

<p>One provider</p>	<p>also pertains to this standard.</p> <p>22 VAC 40-131-340 – Service plans</p> <p>C. "in .. case of short-term foster care placement ... shall develop and implement plan within 72 hours.... “Please clarify-if this is a short-term placement does the service plan need to include all elements under E. 1-7? Clarify if a service plan is needed if a child is in care less than 72 hours.</p>	<p>placements.</p> <p>Requirements for service plans for short term foster care are defined in 22VAC 40-131-340 C. This issue will be clarified in training and technical assistance.</p>
<p>One provider</p>	<p>22 VAC 40-131-490 – Adoption counseling and services for birth parents</p> <p>E. If the birth mother or both birth parents choose to place the child with the licensee for adoption, the licensee shall secure a termination of parental rights in accordance with §§ 16.1-277.01 and 16.1-278.3 and other relevant sections of the Code of Virginia related to termination of parental rights. Please add: for sake of infant adoption programs, the licensee has the right to resolve all parental rights by operation of the law. REASON: Current law does not require licensees to go to court to terminate parental rights unless right is unresolved.</p>	<p>Agency took previous action in response to first public comment. The language in 22VAC 40-131-490 E was removed, as it is already required in 22VAC40-131-250 E.</p>
<p>One provider</p>	<p>22 VAC 40-131-520 – Selecting an adoptive home</p> <p>C2- This is inconsistent with the proposed section, 22VAC40-131-170 which addresses issues of age discrimination. We do agree that age is a consideration in the selection of adoptive families in infant adoptions.</p>	<p>Agency took prior action in response to previous public comment. The language in 22VAC40-131-170 B was changed, deleting “age” to be consistent with federal law, 42 USC 671.</p>
<p>One provider</p>	<p>22 VAC 40-131-540 – Placements requiring legal risk agreement</p> <p>D - Please clarify what determines</p>	<p>This is in the current regulation</p>

	<p>“legally free” - and consider that currently a placement agreement can be signed with a notarized entrustment signed by a birthmother and with the appropriate result from the search of the Putative Father Registry – see 63.2-1233 of the Code of Virginia.</p>	<p>22VAC40-130-330, Minimum Standards for Licensed Child-Placing Agencies, and will not be changed. This placement issue will be clarified in training and technical assistance.</p>
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67 comments were general and not associated with a particular section of the regulation.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC40-130-10. Definitions.	22VAC40-131-10. Definitions.		<p>The following new terms and their meanings are added in order to clarify their use in the body of the regulation: adoptive parent, adoptive placement, adult, annual, applicant, background checks, behavior support, birth parent, caretaker, career and technical education, case management, casework staff, child’s family, dual approval process, emergency placement, employee, foster care placement, foster care services, foster parent, independent living services, in-service training, intercountry placement, local board, local department, mental abuse, mutual selection, parent, parental placement, permanent entrustment agreement, physical abuse, physical neglect, physical restraint, placing agency, pre-service training, provider, records, resource parent, seclusion, serious incident reports, services plan, sexual abuse, short-term foster care, special needs, treatment, treatment foster care, treatment foster parent, treatment team, and youth.</p> <p>The definition for foster care was replaced with foster care placement and foster care services.</p>

22VAC40-130-20. Legal base.	22VAC40-131-20. Scope and applicability.	Legal base provided.	This section combines the legal base and specifies applicability of 22VAC40-131 to types of child-placing agencies.
22VAC40-130-30 Sponsorship	22VAC40-131-30. Sponsorship.	Describes the different types of sponsorships for licensees: individual, partnership, unincorporated association, or corporation and applicable requirements.	This section was expanded to clarify the different business entities recognized by the State Corporation Commission.
22VAC40-130-40. Maintaining standards. 22VAC40-130-50. Financing plan.	22VAC40-131-40. Licensee.	Describes licensee's responsibility to maintain compliance with standards and provide evidence of finances and resources that will ensure operation in compliance with the standards.	This section combines the current 22VAC40-130-40 and 22VAC40-130-50 and includes provisions of General Procedures and Information for Licensure, 22VAC40-80 and § 63.2-1707 of the Code of Virginia (Code). It adds a requirement for compliance with the agency's policies and procedures, addresses information distributed or made available to the public and clarifies that the licensee maintains ultimate responsibility for the child's health, safety and well-being 24 hours a day 7 days a week. The requirements in these sections were combined to improve the clarity of the regulation and to assist providers with compliance.
22VAC40-130-100. Agency setting. 22VAC40-130-110. Office conditions.	22VAC40-131-50. Office settings and conditions.	Requires the licensee to maintain an office in Virginia to conduct business and specifies the spatial and use requirements and storage conditions of the office.	This section combines two sections in the current regulation into one section and clarifies language. All office requirements were combined in one section. The requirements in these sections were combined to improve the clarity of the regulation and to assist providers with compliance.
22VAC40-130-120. Posting of the License	22VAC40-131-60. Posting of the License	Requires the license to be posted in a conspicuous place near the agency entrance and in branch offices.	The requirement is the same with language added for clarity. The most recently issued license must be posted in each office location where child-placing activities are performed.
22VAC40-130-140. Conflict of Interest.	22VAC40-131-70. Conflict of Interest.	This section specifies who can serve on the placing agency's board of directors and prohibits the licensee from accepting an application for adoption from or provide services to its staff or governing board.	The requirements are the same, but language has been updated to include current terminology.
22VAC40-130-130. Caseload numbers and licensed capacity.	22VAC40-131-80. Licensed capacity and maximum caseload	This section specifies numbers for caseloads for staff and trainees and species how licensed capacity is determined.	The proposed regulation is the same as the current regulation except that treatment foster care caseloads are addressed in the proposed regulation. Treatment foster care was not addressed

	numbers.		in the current regulation and has been added. Student intern caseloads have been reduced from 5 to 3. The requirement for a training program for trainees has been moved to 22VAC40-131-140.
	22VAC40-131-90. Policy and procedure.		To protect the health, safety and welfare of children, this proposed section requires the licensee to develop policies and procedures for: admission, discharge and placement of children, foster parent support, licensee record-keeping, reporting of abuse and neglect of children, licensees hiring of qualified staff, notifying the department when an agency ceases operation, handling adverse reactions of children to medications, and acceptable methods of correction of children's behaviors (behavior support).
	22VAC40-131-100. Program evaluation and improvement		This proposed section requires the licensee to evaluate their programs and services and make improvements based on their findings. This will provide greater protections to children in care.
	22VAC40-131-110. Received date for materials		This proposed section is needed to ensure the licensee's compliance with regulations requiring dated materials and timeframes. This will assist providers with compliance.
	22VAC40-131-120. Access to written personnel policies		This proposed section is needed to ensure staff members have a basic understanding of licensee's personnel policies.
22VAC40-130-170. Job description.	22VAC40-131-130. Job descriptions.	The agency shall have a written description of the duties and responsibilities for each staff classification in its program. A copy of each description shall be given to the licensing representative at the time of the initial application and when descriptions are changed.	To ensure the employee is aware of job responsibilities, the proposed language clarifies the current language by describing the content of the job description. It removes the requirement to provide a copy to the licensing representative at the time changes are made as this was burdensome and unnecessary. It adds a requirement that the licensee provide a copy of the job description to employees to ensure that employees are aware of their job responsibilities.
22VAC40-130-190. Staff composition and qualifications.	22VAC40-131-140. Staff composition and qualifications.	It describes required staff positions and the qualifications for each position.	To facilitate staffing of the licensed child placing agency with qualified personnel, the new language expands the potential for individuals with related human services credentials to serve in the position of program director; changes the position title of "director of social

			services” to “program director”; increases the years of experience necessary to serve as child-placing supervisor; and expands the responsibilities of caseworkers.
	22VAC40-131-150. Staff development.		The proposed language provides categories of orientation and training necessary for staff to be knowledgeable about practices, laws, and regulations for the protection and well-being of children. The training includes: agency policy and procedures; child abuse and neglect recognition and reporting; behavior support; emergency preparedness; permanency; and transition from foster care to independent living.
22VAC40-130-180. Personnel records.	22VAC40-131-160. Personnel records.	Requirements for content of personnel records.	The language clarifies the current requirements for background checks, applications and resumes. It provides the ability of licensees to maintain electronic records. It adds a requirement for copies of educational degrees and credentials, and dates of employment and separation of each position. It expands accepted references by allowing oral references. It provides requirements for maintaining documentation for staff records. These new requirements will ensure that staff are qualified to work with children.
22VAC40-130-200. (Foster care) program statement. 22VAC40-130-290. (Adoption) program statement.	22VAC40-131-170. Program statement and description.	Section 200 contains requirements pertaining to foster care and independent living. Section 290 contains requirements pertaining to adoption.	Combined similar requirements for foster care and adoption into one section to reduce redundancy. Included requirements are consistent with §§ 63.2 Chapters 9 and 12 and §§ 63.2-1817 and 1819 of the Code. The prohibition to discriminate based on the sex or handicapping condition of the child was removed. Discrimination based on race, color, or national origin continues to be prohibited in the proposed regulation. These changes were made to be consistent with federal law 42-USC 671.
22VAC40-130-270. The foster family. 22VAC40-130-400. The adoptive home study. 22VAC40-130-280.C.2. Foster care records. 22VAC40-130-410.D.1. direct	22VAC40-131-180. Home study requirements.	Section 270 contains requirements for foster home study. Section 280 requires a foster home application. Section 400 is the adoptive home study. Section 410 is the adoptive home application.	Combined similar requirements for foster care and adoption into one section to reduce redundancy. Included requirements consistent with the Code and 22VAC40-211- Resource, Foster and Adoptive Family Home Approval Standards. Clarifies requirements for short-term foster care, resource and treatment foster care homes. Change made for clarity to remind licensee of requirements for medical examinations in 22VAC40-131-290 L-M to assist

parental placement services.			providers with compliance.
22VAC40-130-270. The foster family.	22VAC40-131-190. Home environment.	Requirements for the home and surroundings.	Requirements were added to be consistent with 22VAC40-211- Resource, Foster and Adoptive Family Home Approval Standards. Requirements increased provisions involving emergency preparedness, bathing and toileting facilities, pets, safe storage of medication, and smoke detectors. Additional requirements will increase the health, welfare and safety of children.
22VAC40-130-270. The foster family. 22VAC40-130-400. The adoptive home study.	22VAC40-131-200. Initial approval or disapproval of home.	Section 270 contains requirements for the approval of foster homes. Section 400 contains requirements for the approval of adoptive homes.	It is consistent with 22VAC40-211- Resource, Foster and Adoptive Family Home Approval Standards. Change was made to allow orientation training to occur prior to the approval of the provider as orientation can provide a time for further assessment of the family.
22VAC40-130-270.C.1. The foster family.	22VAC40-131-210. Provider training and development.	The agency shall have a plan of orientation for each newly approved foster family.	It is consistent with 22VAC40-211- Resource, Foster and Adoptive Family Home Approval Standards. It clarifies the elements of what needs to be included in pre-service training. Agencies may develop pre-service training based on their program statement and description.
	22VAC40-131-220. Training and development for providers of short-term foster care.		This new section is consistent with 22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards, to meet federal funding requirements for foster care services. This section was added because short-term foster care is not addressed in the current regulation. The proposed regulation provides requirements for orientation and pre-service training. Some training elements required for the other types of placements have been eliminated for the short-term foster care provider.
22VAC40-130-270.D. Re-evaluation of foster homes. 22VAC40-130-400.I. Re-evaluations.	22VAC40-131-230. Monitoring and re-evaluation of provider homes.	Sections 22VAC40-130-270.D and 22VAC40-130-400.I addressed only the re-evaluation of foster and adoptive homes.	Along with re-evaluation, elements have been added to ensure the protection, safety and well-being of placed children by requiring periodic monitoring and evaluation of approved providers. This new section is consistent with 22VAC40-211- Resource, Foster and Adoptive Family Home Approval Standards.
22VAC40-130-270.B. Foster home capacity.	22VAC40-131-240. Capacity of provider	The total number of children in the foster home shall not exceed	For the protection, safety and welfare of children, this section clarifies that each child shall have adequate space and

	home.	eight including the parents' own children.	furnishings. It also limits treatment foster homes to two children for the protection, safety and well-being of children. It establishes criteria for determining capacity based on accommodations, capabilities and skills of the provider, and needs of the children in care.
22VAC40-130-210 Intake. 22VAC40-130-300.B. Authority to place.	22VAC40-131-250. Intake, acceptance, and placement.	The current requirements consist of a list of elements with directions to follow Service Programs Manual (Family Services' manuals regarding foster care and adoption).	This section clarifies language of the current regulation, incorporates applicable provisions in § 63.2-1817 of the Code and adds placement requirements for independent living arrangements. The reference to Service Programs Manual was deleted. For the protection, safety and well-being of children, this section adds criteria for the placement of children. For clarity, the term 'intake assessment' is changed to 'intake'.
22VAC40-130-210.C. (Foster care) Intake. 22VAC40-130-310.C. (Adoption) Program statement.	22VAC40-131-260. Social history.	The current requirements consist of information to obtain on a child for the purpose of determining the appropriate goal for the child and services needed to reach the goal.	This section increases the time for completion of the social history from 30 to 45 days to allow for more complete information on the child. More thorough information will assist in protecting the safety and well-being of the child and assist in assessing needs and determining the goal and services to be provided to the child. For adoption, the social history will need to be completed prior to the signing of the adoption agreement; this was changed to ensure children who were not placed in foster homes have a social history completed.
22VAC40-130-430. Interstate compacts.	22VAC40-131-270. Interstate placements.	The current requirements for interstate placements are made by reference only.	This section incorporates interstate compact requirements into the document whereas before these requirements were incorporated only by reference. This section is consistent with requirements §§ 63.2-1104 and 1105 of the Code. This section clarifies that verbal approval by interstate compact is required prior to placement, but written approval must be obtained and maintained in the child's file.
22VAC40-130-270.C.4. The foster family.	22VAC40-131-280. Foster home agreements.	The current requirements consist of information necessary to include in an agreement for placement.	This section clarifies the current language and adds new requirements from § 63.2-902 of the Code. It is consistent with 22VAC40-211-Resource, Foster and Adoptive Family Home Approval Standards. The changes will assist in protecting the health, safety and welfare of the child.
22VAC40-130-220. Ongoing services.	22VAC40-131-290. Medical, dental, and	The current requirement is for the medical examination to be	This section adds the flexibility for the licensee to obtain a medical examination on the emergency-placed child within 60

	psychiatric examinations and care	completed within 30 days of placement for emergency-placed children.	days following placement instead of the current 30 days for any child who has not received a medical examination within 90 days prior to his placement. This was changed due to the difficulty some licensees face in trying to find a Medicaid provider to examine the child on quick notice. The term 'handicap' was changed to currently accepted terms.
22VAC40-130-210.E. Intake.	22VAC40-131-300. School enrollment.	This current requirement made the licensee, whether custodian or not, responsible for enrolling the child in school with 5 days of placement.	This section incorporates language in § 63.2-900 of the Code which requires the custodial agency to enroll the child in school within 72 hours of placement. Language was added to require the licensee to collaborate and work cooperatively with the local department of social services and the education authority to maintain educational stability for each child, based on federal law, Public Law 110-351. It is preferred that children continue to be enrolled in their home locality school to maintain educational stability.
22 VAC40-130-220 Ongoing Services	22VAC40-131-310 Clothing and Spending Money for Children	School age children shall have an allowance.	For clarity and to assist providers with compliance, clothing and spending money for children was separated from a regulation with multiple requirements.
22VAC40-130-460. General. 22VAC40-130-470. Death of a child. 22VAC40-130-480. Abuse or neglect, or both	22VAC40-131-320. Reports and policies to protect children.	The current requirement is limited only to making a report of suspected child abuse and the death of a child.	This section clarifies language for the responsibilities of the licensee and adds requirements for: documentation of reports made, reporting serious incidents to placing agency, the parent or legal guardian, and department; and for the licensee to immediately notify custodial agency and department in cases of suspected child abuse and neglect.
22VAC40-130-220. Ongoing services.	22VAC40-131-330. Visitation and continuing contact with children.	The current requirement describes visitation.	This section has incorporated: the requirements of the Department of Medical Assistance Services for treatment foster care providers, § 63.2-904 of the Code, and 22VAC40-211-Resource, Foster and Adoptive Family Home Approval Standards. It combines different requirements for permanent foster care and children placed in residential settings. The licensee must make certain notifications if a move is made from one foster home to another because local departments who hold custody of the child must be aware of where the child is placed at all times. These changes help to assist providers with compliance.
22VAC40-130-	22VAC40-131-	The current requirement	This section has clarified requirements of

210.H. (Foster care) Intake.	340. Service plans.	is very general and includes components of the services plan including: goal and target date for the child, services to be offered, participation sought, and placement type	the current regulation and incorporated: the requirements of the Department of Medical Assistance Services and § 16.1-281 of the Code for treatment foster care providers. The incorporation of these elements makes the requirements consistent for all placement types.
22VAC40-130-230.B. (Foster care) Intake.	22VAC40-131-350. Quarterly progress summaries.	The current regulation requirement is a written summary for the quarter to evaluate progress made in reaching the child's goal.	This section has clarified requirements from the current regulation and it incorporates the requirements of the Department of Medical Assistance Services for treatment foster care providers. The incorporation of these elements makes requirements consistent for all placement types.
22VAC40-130-240. Termination of care.	22VAC40-131-360. Discharge from care.	This section contains requirements to be included in the child's discharge summary and for custodial agency responsibilities in providing copies of medical and school records to parents or receiving agency.	Changed the word "termination" to "discharge". This section clarifies the language from the current regulation and it incorporates the requirements of the Department of Medical Assistance Services for treatment foster care providers. The incorporation of these elements makes requirements consistent for all placement types.
22VAC40-130-280. Foster care records. 22VAC40-130-420. Adoption records. 22VAC40-130-500. Storage. 22VAC40-130-510. Confidentiality. 22VAC40-130-520. Entries in case records. 22VAC40-130-530. Evidence of compliance. 22VAC40-130-540. Retention of records.	22VAC40-131-370. Case record requirements.	The current regulation lists elements required in the records kept by the licensee.	This new section merges and groups multiple sections into one section to reduce redundancy, clarifies language of the standards, adds language from Department of Medical Assistance Services for treatment foster care, and incorporates requirements of 22VAC40-211- Resource, Foster and Adoptive Family Home Approval Standards. Requirements about storage of active and closed files have been clarified to assist providers with compliance.
	22VAC40-131-380. Behavior support and crisis intervention.		This new section incorporates positive behavior management techniques for parents to use to assist children with overcoming negative or undesirable behaviors and to assist children in learning new coping techniques. It identifies acceptable correction methods. These changes reflect current industry standards.

	22VAC40-131-390. Applicability (Permanent foster care).		This is a new program-specific section that only applies to permanent foster care. This change makes the regulation more user-friendly.
22VAC40-130-250. Permanent foster care.	22VAC40-131-400. Children placed in permanent foster care	The current regulation incorporates by reference the state social services department Service Programs Manual (Family Services' manuals regarding foster care and adoption).	This section removes the reference to the Service Programs Manual and lists the requirements of § 63.2 Chapter 9, § 16.1-281 and § 16.1-282 of the Code. It clarifies that permanent foster care homes are approved, monitored, and evaluated the same as other provider home types.
	22VAC40-131-410. Applicability (Short-term foster care).		This is a new program-specific section that only applies to short-term foster care. This change makes the regulation more user-friendly.
	22VAC40-131-420. Children placed in short-term foster care		This section is consistent with 22VAC40-211 - Resource, Foster and Adoptive Family Home Approval Standards except that the term respite care services is replaced with short-term foster care in 22 VAC40-131.
	22VAC40-131-430. Applicability (Independent living arrangements).		This is a new program-specific section that only applies to independent living arrangements. This change makes the regulation more user-friendly.
22VAC40-130-260. Independent living arrangements.	22VAC40-131-440. Youth placed in independent living arrangements.	The current regulation incorporates by reference the state social services department Service Programs Manual (Family Services' manuals regarding foster care and adoption).	This section removes the reference to the Service Programs Manual and adds specific requirements for placing youth in independent living arrangements. It is consistent with the requirements of § 63.2 Chapter 9, § 16.1-281 and § 16.1-282 of the Code for independent living arrangements. These requirements are now specifically listed in the regulation which will assist providers with compliance.
	22VAC40-131-450. (Applicability Treatment foster care).		This is a new program-specific section that only applies to treatment foster care. This change makes the regulation more user-friendly.
	22VAC40-131-460. Children placed in treatment foster care.		The current regulation does not include the requirements for treatment foster care. The programs providing those services were required to follow the separate Medicaid regulation for treatment foster care. This section now incorporates the Medicaid requirements. This will assist providers with compliance.

	22VAC40-131-470. Applicability (adoption).		This is a new program-specific section that only applies to adoption. This change makes the regulation more user-friendly.
22VAC40-130-390. Agency fees.	22VAC40-131-480. Fees for adoption applications and services.	The current regulation requires an explanation of fees, determination of fees and refund policy.	This section contains clarifying language and adds the requirements for full disclosure of fees, provision of a copy of the fee explanation to the applicant, and the establishment of a mutually acceptable written agreement for fees.
	22VAC40-131-490. Adoption counseling and services for birth parents.		This section incorporates applicable adoption requirements of § 63.2-1224-1226 of the Code.
22VAC40-130-370. Involuntary termination of parental rights.	22VAC40-131-500. Involuntary termination of parental rights.	The current regulation includes a statement of when to seek termination of parental rights, requires the submission of a permanent placement plan to the court and incorporates by reference social services department's Service Programs Manual (Family Services' manuals regarding foster care and adoption).	This section requires the licensee to follow § 16.1-281-283 of the Code when involuntary termination of parental rights is necessary.
22VAC40-130-360. Provisions for children with special needs.	22VAC40-131-510. Provisions for adopting children with special needs.	The current regulation specifies to make a referral to Adoption Resource Exchange of Virginia and incorporates by reference the social services department's Service Programs Manual (Family Services' manuals regarding foster care and adoption).	This section clarifies the requirements for making a referral to Adoption Resource Exchange of Virginia and incorporates language from the social services department's Service Programs Manual. Adoption 'subsidy' is removed and replaced with 'assistance' due to changes made to § 63.2-1300- Adoption Assistance for Children with Special Needs of the Code. Language requiring the agency to make arrangements for services for a child with special needs after the final order of adoption has been changed to language requiring the licensee to ensure that services and treatment are provided to children with special needs. Language 'pursuant to Title 63.2, Chapter 13 of the Code of Virginia' is added to ensure compliance with this Code.
22VAC40-130-320. Items to be considered when selecting an adoptive home.	22VAC40-131-520. Selecting an adoptive home.	The current regulation requires foster parents to be a primary adoptive resource and details requirements for consideration when	This section adds relatives as a primary adoptive resource and increases the opportunity to be consistent with permanency goals. It incorporates language from requirements in § 63.2-900.2 of the Code. The licensee must

		selecting an adoptive home.	provide adoptive parents factual information about the child and the child's birth family.
22VAC40-130-400 G. The adoptive placement agreement.	22VAC40-131-530. Adoption placement agreement.	The current regulation requires the licensee to follow the foster home agreement.	Clarifies that adoption placements must follow the same requirements for the placement agreement at acceptance of the child and adds requirements from § 63.2-1221 of the Code.
	22VAC40-131-540. Placements requiring legal risk agreement		This new section incorporates requirements § 63.2-1221 of the Code. It addresses conditions under which the valid entrustment agreement may be revoked, clarifies that the placement is recognized as a foster home placement thus requiring the foster home agreement, and requires the prospective adoptive parents to sign a written statement acknowledging the revocation conditions. This statement must be maintained in the child's file.
22VAC40-130-340. Placement of children over one year.	22VAC40-131-550. Adoptive placement of children over one year of age; additional provisions.	The current regulation requires 22VAC40-130-320 to be considered in placing a child over one year. An older child's concerns about adoption must also be considered.	This section incorporates requirements in § 63.2 Chapter 12 of the Code. It requires the involvement of the child in adoption planning and includes the responsibility of the licensee to document services and contacts provided to the child for adoption preparation.
	22VAC40-131-560. Parental placement adoption services.		This new section incorporates requirements in § 63.2 Chapter 12 of the Code and specifies the licensee's responsibilities of conducting the home study, ensuring the exchange of information between birth and adoptive parents, ensuring adoption decision is an informed decision and has not been a coerced decision, and providing counseling to prospective adoptive parents.
	22VAC40-131-570. Parent-recommended homes for adoptive placements.		This new section incorporates requirements §§ 63.2-1225 and 1226 of the Code and specifies the licensee's responsibility when accepting custody of a child for the purpose of adoption to include providing information to the birth parents about adoption placements and obtaining their decision about placement option, allowing representation by legal counsel and counseling.
22VAC40-130-350. Agency responsibility after child is placed in the adoptive home.	22VAC40-131-580. Post-placement responsibility for adoptive home placements.	This section requires supervisory visits and that the licensee maintain contact with the family until the final order or adoption. It clarifies that the agency is responsible	This new section incorporates requirements in § 63.12-1212 of the Code and clarifies the licensee's responsibilities specified in 22VAC40-130-350.

		for the child until final order of adoption is entered.	
	22VAC40-131-590. Intercountry placement adoptions.		This new section incorporates requirements of the Hague Adoption Convention, Intercountry Adoption Act of 2000, and Department of the State regulations on intercountry adoptions and requires the licensee to notify the department of details pertaining to the licensee obtaining or losing accreditation status.
22VAC40-130-380. Interlocutory orders.	22VAC40-131-600. Interlocutory orders of adoption.	This section describes the conditions under which the licensee may issue its consent to an interlocutory order.	This new section incorporates requirements § 63.2-1209, § 63.2-1210, and § 63.2-1211 of the Code.
	22VAC40-131-610. Subsequent adoptive placements.		This section provides clarification and responsibilities of the licensee when an approved home provider requests additional adoptive placements for their home. This section specifies requirements for home study, interviews, and orientation of the provider.

Minor grammatical, typographical, and numbering/lettering errors were also corrected. The word ‘provider’ is used in this proposed regulation in place of ‘foster parent’ and ‘adoptive parent’ in some situations.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulation is intended to help children find safe, stable and permanent homes which ultimately benefits society as a whole.

Private licensed child-placing agencies will benefit from this regulation by: consolidation of the requirements and updates of practice requirements specified in the Code of Virginia, applicable current practices and requirements of 22VAC40-130, and requirements of other social services regulations into one regulation set; some relaxed requirements for hiring casework staff; available specific clarity on expectations and requirements for compliance; available clarity on standards regarding applicability and, identifying any standards that are not applicable to certain home/program types.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This new regulation will allow families who foster or adopt children to receive better training and support for managing the children placed in their homes. By doing so, children's placements will become more stable, allowing children the safety and security of a family home within which to reside, while promoting permanency for the child.